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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

March 21, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Dear Administrator Pruitt:

Prior to your confirmation as Administrator, you committed, both to EPA's Designated Ethics Official (DAEO) and to Members of the Environment and Public Works Committee, to avoid actual or apparent conflicts of interest. We are seeking information on the actions you have taken to address the conflict created by i) your role in representing the State of Oklahoma in litigation challenging the EPA's Clean Water Rule and ii) the direction issued to you in the February 28 executive order on "The Waters of the United States", which, among other instructions, includes in section 2(c) explicit direction concerning that very litigation.¹

In your January 3, 2017, Ethics Agreement,² you stated that for a one-year period, you "will seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party." This commitment was reiterated in a January 16, 2017 response to a January 12 letter sent by nine Members of the Environment and Public Works Committee from Kevin Minoli, EPA's Designated Agency Ethics Official (DAEO) and Principal Deputy General Counsel, which also stated:

"Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated Agency Ethics Official would consider the factors set forth in 5 C.F.R. section 2635.502(d)(1)-(6) for purposes of compliance with the federal ethics rules."

Additionally, in response to questions for the record submitted to the Committee on Environment and Public Works you stated:

¹ <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

² [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/\\$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf)

“As EPA Administrator I will recuse [sic] from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials.”

In July 2015, you filed an action in the U.S. Circuit Court of Appeals for the Tenth Circuit (*State of Oklahoma ex. rel E.Scott Pruitt v. EPA*) challenging the Clean Water Rule (interpreting “Waters of the United States”) on behalf of the State of Oklahoma; the case was later consolidated and transferred to the Sixth Circuit (*In re: Department of Defense and U.S. EPA Final Rule: Clean Water Rule*).

In the February 28 Executive Order, the President directed you to i) “review” the Clean Water Rule (interpreting “Waters of the United States”) and propose a rule “rescinding or revising” the final rule, and ii) “review all orders, rules, regulations, guidelines, or policies implementing or enforcing the final rule” and to “rescind or revise” or propose “rules rescinding or revising” the same. Additionally, section 2(c) of the Order directed as follows: “With respect to any litigation before the Federal Courts related to the final rule listed in subsection (a) of this section, the Administrator shall ... promptly notify the Attorney General of the pending review ... so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measure as he deems appropriate concerning such litigation”

Although we all continue to believe³ that you should have made more extensive recusals than the ones you committed to, the specific language in section 2(c) of the Order should have triggered even the more limited recusal policy to which you have already and repeatedly agreed.

In light of: 1) your Ethics Agreement; 2) the response of EPA’s DAEO to the January 12 letter; 3) your representation to the Committee during your confirmation process; 4) your role representing the State of Oklahoma in litigation challenging the Clean Water Rule; and 5) the direction you received in the Executive Order concerning that litigation, please respond within five (5) business days to the following requests in writing and provide copies of all documentation supporting your responses:


1. Have you recused yourself from actions concerning the Clean Water Rule specified in the February 28 Executive Order, and, if so, to what extent have you done so? If not, why not? If so, please also provide the name(s) and identify the position(s) of the individual(s) you have directed to act in your stead.
2. Have you sought authorization to participate in those actions from the DAEO – and if you have done so, when did you do so? Please provide a copy of any written material submitted to the DAEO in making, or following up on, that request.
3. Has the DAEO granted such authorization, and if so, has the authorization included any restrictions or limitations on your participation? Please provide a copy of any written material conveying the DAEO’s response.
4. If you have neither been recused from participation in this matter nor sought authorization from the DAEO to participate in the actions directed by the Executive Order with respect to the Clean Water Rule, please explain why you have not.
5. Have you requested or received a waiver to participate personally and substantially in any other particular matters involving specific parties in which the State of Oklahoma is a

³ <http://www.markey.senate.gov/imo/media/doc/Pruitt%20recusal%20letter%202002.16.17.pdf>


party or represents a party? If so, please provide copies of all such requests and all such grants from the DAEO.


Please provide your responses to these inquiries and requests by no later than March 29, 2017. If you have any questions about these requests, please feel free to contact Michal Freedhoff or Joseph Goffman at the Committee on Environment and Public Works at 202 224 8832. We very much appreciate your prompt attention to this matter.

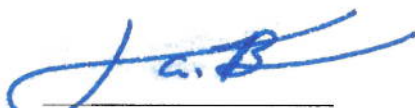
Sincerely,


Tom Carper
U.S. Senator


Bernard Sanders
U.S. Senator


Sheldon Whitehouse
U.S. Senator


Jeffrey Merkley
U.S. Senator


Cory Booker
U.S. Senator


Edward J. Markey
U.S. Senator